

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 20-1007V

UNPUBLISHED

DEBBIE MYERS,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: June 2, 2023

Special Processing Unit (SPU);
Ruling on Entitlement; Uncontested;
Table Injury; Influenza (Flu) Vaccine;
Shoulder Injury Related to Vaccine
Administration (SIRVA)

Lawrence R. Cohan, Saltz, Mongeluzzi, & Bendesky, Philadelphia, PA, for Petitioner.

Parisa Tabassian, U.S. Department of Justice, Washington, DC, for Respondent.

RULING ON ENTITLEMENT¹

On August 13, 2020, Debbie Myers filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that she suffered a left shoulder injury related to vaccine administration (“SIRVA”), a defined Table injury, after receiving the influenza (“flu”) vaccine on October 24, 2017. Petition at 1, ¶¶ 3, 16. Petitioner further alleges that she received the flu vaccine in the United States, that she suffered the residual effects of her SIRVA for more than six months, and that neither she nor any other party has filed a civil

¹ Because this Ruling contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Ruling will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

case or received compensation for her SIRVA injury. *Id.* at ¶¶ 3, 16-17. The case was assigned to the Special Processing Unit of the Office of Special Masters.

Because Petitioner had been unable to procure a vaccine record, I addressed the issue of proof of vaccination in a factual ruling – determining that the record supported Petitioner’s assertion that she received a flu vaccine intramuscularly in her left deltoid on October 24, 2017. ECF No. 43. On June 2, 2023, Respondent filed a Rule 4(c) Report, indicating that in light of my factual ruling and while preserving his right to appeal, he would not contest entitlement. ECF No. 47. Specifically, he indicates that “[b]ased on [my] fact ruling, and the medical record evidence submitted in this case, DICP will not continue to contest that [P]etitioner received a flu vaccine, as alleged, and suffered SIRVA as defined by the Vaccine Injury Table.” *Id.* at 6.

In view of Respondent’s position and the evidence of record, I find that Petitioner is entitled to compensation.

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master